IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1576 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI V PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1576 of 2000

MR KB PUJARA for Petitioner No. 1

MR DP JOSHI, APP, for Respondent No. 1

MR HJ NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/11/2001

ORAL JUDGEMENT

1. The petitioner herein seeks quashing of criminal proceedings against him in the Court of learned Judicial Magistrate, First Class, Botad, vide Criminal Case

No.1151 of 1986. The proceedings are in the nature of a complaint preferred by respondent No.2 against the petitioner for offence punishable under Section 406 of Indian Penal Code. The allegations made in the complaint are that the petitioner had dishonestly convinced respondent No.2 to deposit Rs.11,000/- and when the deposit was demanded back, it was not paid. The premises were locked and thereby the petitioner has committed breach of trust.

2. The case of the petitioner is that the petitioner was running a business of money lending and Shroff after obtaining due licences. For some reason or the other, there was a rush for liquidating the deposits by the depositors which, ultimately, led to closure of the business. A number of complaints were preferred against the petitioner which were sought to be quashed by the petitioner by preferring similar petitions. Those petitions were accepted by this Court and, therefore, this petition also may be accepted.

3. Learned advocate Mr. Pujara appearing for the petitioner submitted that mens rea is totally absent. The petitioner started business of Shroff in 1977 and people had posed faith in him. The business was going well, but for one reason or the other, there was a sudden rush amongst the depositors, who wanted their money back. As the banking system works, the liquidity is limited which, ultimately, led to closure of the premises. Ultimately, an insolvency petition is also filed against the petitioner. Mr. Pujara submitted that there is no mens rea and there is no intention to usurp the money and commit breach of trust. Similar petitions have been allowed by this Court in respect of complaints by other depositors and, therefore, this petition may also be allowed.

4. Mr. Nanavati, learned advocate for respondent No.2, submitted that this case is slightly different from other cases. Mr. Nanavati submitted that the present petitioner had preferred a quashing petition earlier. Pending that petition, charge sheet came to be filed and, therefore, the petitioner, instead of obtaining an order on merits, withdrew the petition and approached the Trial Court with an application for discharge. That application has been rejected by the learned Magistrate and, thereafter, this petition is filed. Mr. Nanavati, therefore, submitted that thus, there is prima facie case against the petitioner and the petition may, therefore, be dismissed.

5. Mr. Joshi appears for respondent No.1-State. He states that since the charge sheet is filed and discharge application is rejected, there is ample material against the petitioner and the petition may, therefore, be not entertained.

6. There is no dispute about the fact that earlier petitions were preferred by the present petitioner on identical facts for quashing of complaints by other creditors, which have been allowed, which can be detailed as under :-

(1) Criminal Misc. Application No.1674 of 1989.
(2) Criminal Misc. Application No.1675 of 1989.

7. The only distinguishing feature that is pressed in service by learned advocate Mr. Nanavati is that in the instant case, charge sheet has been filed and the discharge application has been rejected by the learned Trial Magistrate. A look at the order of the learned J.M.F.C. rejecting prayer for discharge indicates that the foundation of the charge sheet is that the petitioner has accepted the deposit and has not repaid the same and has misappropriated the same to his personal use. The learned Magistrate observes that, it is true that for recovery of money, a suit is required to be filed, but because the office is closed, it may not be practicable and when depositors are duped, it cannot be ignored. It may lead people to open some such Shroff firms and dupe the people. There appears not any cogent reason to support the conclusion of rejection of discharge application. Closure of office by itself cannot lead to a presumption of dishonest intention or breach of trust, particularly, in the set of of present circumstances. As held earlier by this Court in earlier orders, the relationship between the parties was that of a creditor and a debtor and it cannot be said that the amount was entrusted. In this view of the matter, when this Court has taken a view that the complaint cannot be entertained in identical set of circumstances involving this very petitioner, this Court is inclined to exercise its discretion in favour of the petitioner.

8. The petition is allowed. The criminal proceedings arising out of an F.I.R. lodged with Botad Police Station vide C.R. No.148 of 1986 are hereby quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]
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